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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: ECOFIN Report to the European Council on Tax issues

1. The Council (ECOFIN) was invited to report back to the European Council on various tax issues mentioned, in particular in its conclusions of March and June 2012 and of 22 May 2013.
2. A draft ECOFIN Report to the European Council on Tax issues was prepared in the Council High Level Working Party on Tax issues (HLWP) on 25 November 2014, for submission to the Council via Coreper.
3. ECOFIN on 9 December 2014 endorsed the report as set out in the Annex, and agreed to forward it to the European Council on 18/19 December 2014.

ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

1. This report covers various issues mentioned in the European Council Conclusions of 1/2 March 2012¹ devoted to growth, as well as in the European Council Conclusions of 28/29 June 2012 and the relevant Council Conclusions on the future of VAT and on the fight against tax fraud and tax evasion². It gives an overview on the state of play of Council work regarding some key legislative proposals, which were specifically mentioned in the aforementioned conclusions, such as Energy Taxation, the Common Consolidated Corporate Tax Base, the Financial Transaction Tax and the negotiations for Savings agreements with third countries.
2. More recently, the European Council on 22 May 2013³, 24/25 October 2013⁴, 19/20 December 2013⁵ and 20/21 March 2014⁶, identified tax dossiers where quick progress needed to be made. These dossiers, which respond to the increasing need to ensure the fairness and effectiveness of tax systems, are covered by the current report.
3. In line with the more recent request from the European Council, during the Italian Presidency the Council has focused its work on the fight against tax fraud and tax evasion, aggressive tax planning and base erosion and profit shifting (BEPS). This has been done, in particular, by:

¹ EUCO 4/3/12 REV 3 (items 9 and 21).

² Docs 9586/12 FISC 63 OC 213 and 14877/12 ECOFIN 864 FISC 136 OC 579.

³ EUCO 75/1/13 REV 1, 22 May 2013.

⁴ EUCO 169/13, 24/25 October 2013.

⁵ EUCO 217/13, 19/20 December 2013.

⁶ EUCO 7/1/14 REV 1, 20/21 March 2014.

- prioritizing work on expanding automatic exchange of information under the Directive on Administrative Cooperation;
- pursuing the inclusion of a common anti-abuse provision in the Parent-Subsidiary Directive;
- promoting the development of a EU/BEPS work programme and focusing the discussion on the Common Consolidated Corporate Tax Base proposal on international and BEPS-related aspects.

In carrying out this work, the Presidency has encouraged the consistency with parallel OECD initiatives, while respecting EU law.

4. In the field of indirect taxation, the work of the Council during the Italian Presidency has continued with the aim to: improving the VAT system to make it more resilient and simpler for economic operators; making the taxation of energy products and electricity more neutral and consistent with energy and climate objectives; seeking progress on the Financial Transaction Tax in the framework of enhanced cooperation.
5. This report shows that during the Italian Presidency considerable progress has been made across a range of files while on others the Italian Presidency set the path to be followed by future Presidencies.

A. Legislative dossiers

Revision of the Directive on Administrative Cooperation in the field of taxation

6. Following the European Council conclusions of 22 May 2013, the Commission presented on 12 June 2013 a proposal for amendments to Directive 2011/16/EU ("Directive on Administrative Cooperation" - DAC). The aim was to expand automatic exchange of information to a broad range of financial income thereby aligning EU law with the new standard for automatic exchange of financial account information developed by the OECD and endorsed by the G20 (the global standard). This will provide Member States' tax administrations with a very powerful new tool to tackle cross-border tax fraud and evasion.
7. On 19/20 December 2013, the European Council called on the Council "to reach unanimous political agreement on the Directive on Administrative cooperation in early 2014" and, in its Conclusions on 20/21 March 2014, it invited the Council "to ensure that, with the adoption of the Directive on Administrative Cooperation by the end of 2014, EU law is fully aligned with the new global standard".
8. In line with the above Council conclusions, the Presidency has continued the technical work on the necessary amendments to the Commission proposal in order to incorporate the various elements of the global standard (i.e. Model Competent Authority Agreement, Common Reporting Standard and Commentary). In-depth discussions have taken place on the most appropriate option for incorporating into EU law the OECD Commentary, with a view to finding a solution aimed at striking a balance between the need to ensure a consistent application of the global standard by financial institutions and the need for flexibility in reflecting possible future changes of the OECD Commentary. The final text of the Directive contains in an Annex the parts of the Commentary which are complementary to the Common Reporting Standard (also included in an Annex of the Directive) whilst the remaining parts of the Commentary are taken into account as a source of interpretation.

9. The Italian Presidency has also carefully examined, in consultation with data protection experts, the confidentiality safeguards relating to the new automatic exchange of information system. Appropriate provisions were included in the legal text of the proposal with a view to ensuring full consistency with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data, also in response to the Article 29 Data Protection Working Party letter on the OECD global standard.
10. At the High Level Working Party of 2 October 2014, delegations discussed the alignment of the implementation timetable of the revised DAC with that of the global standard, as envisaged by the "Early Adopters" group. Moreover, discussions took place on the interactions between the revised DAC and the Savings Directive.
11. On 14 October the ECOFIN Council reached political agreement on the DAC amending proposal. Subsequently, the proposal was formally adopted at the ECOFIN Council of 9 December 2014. The implementation timeline of the Directive, which reflects the calendar of the "Early Adopters" group, provides for the first exchange of information to take place in 2017, with the obligation for financial institutions to apply the new due diligence rules as from 1 January 2016, with regard to financial accounts maintained by Reporting Financial Institutions as of 31 December 2015. By way of derogation, Austria will postpone by one year the application of the Directive. However, Austria took the commitment to deploy its best efforts to ensure – if it is technically feasible – an earlier implementation than 30 September 2018. The December ECOFIN Council welcomed the intention of the Commission to present early in 2015 a proposal to repeal the Savings Taxation Directive (2003/48/EC of 3 June 2003), as amended, and to coordinate the repealing of that Directive with the date of application of the revised Directive on Administrative Cooperation, with due regard to the derogation provided therein for Austria.

Savings Negotiations with European third countries

12. On 17 June 2011, the Commission adopted a recommendation for a mandate to initiate negotiations with Switzerland, Liechtenstein, Andorra, Monaco and San Marino, in order to upgrade the EU's agreements with those countries and to ensure that they continue to apply measures equivalent to those in the EU.
13. At the Council on 14 May 2013 agreement was reached on the Negotiating Mandate, in line with the recent developments at global level, where it was agreed to promote automatic exchange of information as an international standard.
14. The European Council of 19/20 December 2013 called for speeding up the negotiations with European third countries and asked the Commission to present a progress report to its March meeting.
15. At its meeting on 20/21 March, the European Council welcomed the Commission's report on the state of play of savings negotiations with the five European third countries and called on the Commission to carry forth the negotiations with these countries swiftly with a view to concluding them by the end of the year. The European Council also invited the Commission to report on the state of play of the negotiations at its December meeting. If sufficient progress is not made, the Commission's report should explore possible options to ensure compliance with the new global standard.

16. During the Italian presidency, the Council has followed closely the progress of the negotiations with the five European third countries. The Commission provided an update on the state of play of these negotiations at the 8 July ECOFIN, and subsequently at the High Level Working Party (HLWP) meetings of 2 October and 25 November 2014. The Commission noted that negotiations aiming at revising the existing EU savings agreements with Andorra, Liechtenstein, Monaco, San Marino and Switzerland to bring them into line with the OECD global standard are progressing constructively. Negotiations should allow for a finalisation of the agreements, from a technical point of view, before the end of 2014. A letter by Commissioner Moscovici to ECOFIN Ministers describes the state of play of negotiations. Member States confirmed the need to conclude these negotiations speedily and to be kept informed regularly on further developments.

Common Consolidated Corporate Tax Base

17. The Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) was tabled by the European Commission on 16 March 2011, as a contribution to more growth-friendly taxation advocated by the Europe 2020 strategy. Since then, intensive technical discussions on the proposal have been taking place in the Council preparatory bodies.
18. On 13 March 2013, the High Level Working Party (HLWP) agreed that:
- a) work on the proposal should focus on a step-by-step approach;
 - b) the first step should focus on those matters which are related to the tax base;
 - c) the issue of consolidation should be addressed in a second step when work on the base has been sufficiently advanced;
 - d) the proposal was not yet ready for a political discussion;
- and invited the Presidency to begin the task of drafting a compromise text on that basis.

19. The Italian Presidency has advanced work on the CCCTB proposal by organising four meetings of the Council Working Party on Tax Question (WPTQ). Taking into consideration the abovementioned roadmap and in line with the Italian Presidency's wish to promote an EU-BEPS related agenda, discussions have been focused on the international aspects related to the tax base as well as on certain aspects of the CCCTB proposal which are closely linked to the OECD BEPS work. In addition, under the Italian Presidency, the Council has further examined some issues of the tax base which concern the financial sector (e.g. banks and insurance undertakings).
20. Building also on the work done under the previous Presidencies, the Italian Presidency has drafted an overall compromise text covering the elements related to the tax base and the international aspects (doc. 15756/14 FISC 197).
21. At the October ECOFIN the Council held an informal discussion on how to make concrete progress on this dossier in the short to medium term. As outcome of this debate, the importance of taking into consideration the international developments and the parallel work at the OECD level on BEPS was noted and the Presidency concluded that future work on the CCCTB proposal should continue in a progressive way by focusing first on the international aspects of the proposal (in particular, controlled foreign companies (CFC) and anti-abuse measures, hybrid mismatches, interest limitation rule and definition of permanent establishment). The ECOFIN Council will be informed of the progress by mid-2015, also with a view to coordinating discussion on CCCTB with the timetable of the ongoing OECD BEPS work, the outcomes of which are expected for September 2015.

Amendment to the Parent-Subsidiaries Directive

22. On 25 November 2013, the Commission submitted a proposal to amend Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (“Parent-Subsidiaries Directive” - PSD). The proposal aimed at tackling double non taxation deriving from hybrid loans and introducing a general anti-abuse rule in order to prevent abuses of the Directive.
23. In its conclusions on 19/20 December 2013, the European Council stated that "progress should also be made quickly towards agreement on amending the Parent-Subsidiary Directive".
24. During the Hellenic Presidency the Council agreed to split the proposal and to adopt first the part dealing with hybrid loan mismatches. This part of the proposal was adopted on 8 July 2014. In accordance with the statement to the Council minutes which underlined "the need to continue to work on the remaining part of the amending proposal", the Italian Presidency brought forward work on the general anti-abuse provision.
25. The Italian Presidency organised four Council WPTQ meetings and two Fiscal Counsellors/Attachés meetings. Technical discussions have centred on a compromise text proposing a “common minimum anti abuse rule” which would supplement, without replacing, Member States’ domestic and agreement-based provisions to prevent tax evasion, tax fraud or abuse. The proposed anti-abuse rule, by filling the gaps arising from the misalignments in Member States’ rules aimed at tackling abusive practices, would provide a common minimum level of protection of the PSD against abuses. Such a rule would only come into play if and to the extent that the Member State concerned does not have a domestic anti-abuse rule or has a domestic anti-abuse rule which is less strict than the proposed “minimum standard”.

26. A Presidency compromise text (doc. 14531/1/2014 REV 1 FISC 165) was submitted to the Council (ECOFIN) on 7 November 2014 in view of reaching a political agreement. On that occasion, all Member States agreed in principle on the introduction of the anti-abuse clause but political agreement could not yet be reached due to Parliamentary scrutiny reservations by two delegations and requests for further technical clarification on the text by two Member States. After further discussion at expert level, this file was submitted to the Council (ECOFIN) of 9 December 2014, where political agreement was reached.

Interest and Royalties Directive

27. In November 2011, the Commission tabled a proposal to recast Council Directive 2003/49/EC on the common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (“Interest and Royalties Directive” – IRD). Since the Interest and Royalties Directive has been amended several times, this proposal aims first at recasting it for the sake of clarity. Moreover, the proposal would introduce some substantial changes to the existing Directive, notably: extending the list of companies to which the Directive applies; reducing (from 25% to 10%) the shareholding thresholds to be met for companies to qualify as associated; adding a “subject to tax” requirement for the tax exemption.
28. The proposal has been discussed during previous Presidencies but, due to remaining major divergences, no agreement has been reached so far.

29. Within the framework of its EU-BEPS work programme, at the High Level Working Party (HLWP) meeting of 23 July 2014 the Italian Presidency has proposed to have a fresh look at the Commission proposal. All Member States agreed. Subsequently the Presidency organised a Council WPTQ meeting where discussion has also focused on the possible inclusion, in the revised IRD, of a general anti-abuse provision similar to the one being discussed in the context of the PSD (i.e. *de minimis* rule). In addition, building on work done at OECD level in the context of the BEPS project, the Presidency has proposed the inclusion in the IRD of a specific anti-abuse provision to tackle abusive practices concerning intangibles where taxpayers exploit zero or low tax jurisdictions. In particular, the proposed rule would be based on a double test: a low taxation test, which compares the level of taxation in the recipient's Member State to that in the source state; and an activity test to catch those cases where the recipient is not involved in genuine activities justifying the property of the intangibles concerned. Discussion of the Presidency proposal on a minimum standard anti-abuse rule in the IRD was stayed pending agreement on the anti-abuse clause in the PSD.

Revision of the Energy Taxation Directive

30. In April 2011 the Commission presented to the Council a proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity ("the Energy Taxation Directive" - ETD). The proposal presented by the Commission seeks to bring the ETD more closely into line with the EU's energy and climate change objectives as requested by the March 2008 European Council. In June and October 2012, the European Council asked that work and discussions on the Commission proposal on energy taxation should be carried forward.
31. The proposal has been discussed at two meetings of the Council WPTQ, once at the HLWP (2 October) and at the ECOFIN Council of 14 October.

32. Along the lines drawn up in the Hellenic Presidency Progress Report (doc. 10417/14 FISC 91) to the ECOFIN Council in June 2014, the Italian Presidency worked on some of the main outstanding issues as set out in that Report and focussed its efforts on addressing the key challenges of the proposal. Following a preliminary technical examination of some of the outstanding issues at Working Party level, the Italian Presidency presented the new overall compromise text (doc. 13116/14 FISC 129) , with a view to striking the balance between energy and climate goals and competitiveness and growth.
33. The Italian Presidency has essentially proposed to:
- maintain the combined structure of taxation, as proposed by the Commission, which would establish EU minimum rates for energy products calculated on the basis of an energy-related component and a CO₂-related component;
 - progressively increase the minimum levels of taxation of the energy products over a six-year period (2016-2022), with higher increases for motor fuels in comparison with heating fuels;
 - provide Member States with a certain leeway in setting their national tax rates (above EU minima rates) on energy products for heating purposes to address the interplay between the ETD and the EU Emission Trading System.
34. At the ECOFIN Council on 14 October 2014, the ministerial debate confirmed the divergence of positions among Member States. Some delegations supported the Presidency approach and encouraged to continue the discussion on that basis; other Member States signalled that the compromise text is unacceptable to them, while suggesting that the Council should avoid further discussion on this dossier. Some delegations signalled that the compromise text now departed significantly from the original Commission proposal. The Commission took note of the views expressed and declared its intention of reflecting on the possible way forward in a near future.
35. Work in the Council will be pursued in the light of the ECOFIN discussion.

The common system of Financial Transaction Tax

36. The proposal for a Directive on a common system of financial transaction tax (FTT) was submitted by the Commission to the Council on 28 September 2011. The proposal had as objectives a fair contribution of the financial sector to the costs of the crisis, avoiding fragmentation of the single market, and creating appropriate disincentives for transactions that do not enhance the efficiency of financial markets.
37. Unanimous agreement by all Member States could not be attained within a reasonable period. A number of Member States supported the examination of the FTT in the framework of enhanced cooperation. Adoption of a decision formally authorising enhanced cooperation among eleven Member States took place at the ECOFIN meeting on 22 January 2013. A formal Commission proposal for a Directive implementing enhanced cooperation in the area of financial transaction tax was put forward to the Council on 14 February 2013.
38. Building on the work done by previous Presidencies, the Italian Presidency has been bringing forward the proposal at the level of the Council WPTQ.
39. Following the lines drawn up in the Joint Statement by the Ministers of ten participating Member States released on 6 May 2014 for a progressive implementation of the FTT, the Presidency directed its main efforts, at the two Council WPTQ meetings held, to:
- define the categories of financial products that could fall within the scope of the FTT in the first stage; and
 - seek an agreement on the basic principle (or principles) of taxation that could apply for the whole structure of the FTT.

40. While some progress has been made towards convergence of views of the Member States on the scope of the FTT for transactions in shares, the scope of the FTT for derivatives as well as the taxation principles for both transactions in shares and derivatives remain key outstanding issues.
41. Concerning transactions in shares, the Presidency has worked on identifying and defining the scope of taxable transactions and some technical fine-tuning still remains to be done. To facilitate the compromise, the Presidency has suggested flexible solutions to address some issues raised by a number of Member States and, *inter alia*, on how transactions in listed and non listed shares should be taxed.
42. For transactions in derivatives, the Presidency has focused its work on identifying the categories of derivatives subject to FTT in the first stage. Member States expressed different views on which derivative instruments should be taxed in the first design of the FTT.
43. As to the taxation principles, whilst there is a certain degree of agreement on combining both issuance and residence principles, different views of participating Member States still remain on how to achieve this objective. A group of Member States has supported the approach followed by the Commission proposal, i.e. application of the residence principle (tax levied on the basis of the place of establishment of the parties to the taxable transaction), supplemented by the issuance principle as a last resort. Another group of Member States has supported the issuance principle (i.e., tax levied depending on the place of the establishment of the issuer).

44. To facilitate consensus, the Presidency has also explored the possibility to combine the application of the issuance principle with a revenue allocation mechanism and proposed three possible methods to ensure that revenues collected by the participating Member States under the issuance principle would be allocated on the basis of alternative parameters, i.e. residence principle or combination of residence and issuance principles or other economic parameters (GNI, population, etc.). However, delegations could not yet agree on the solution of revenue distribution that would be acceptable to all of them.
45. Following discussions at Working Party level, the ECOFIN Council held an exchange of views on 7 November 2014 on the proposal, on the basis of a Presidency note outlining the state of play of the negotiations. Some non-participating Member States expressed concerns on the potential negative impact of the FTT on markets outside the FTT-area and on the functioning of the internal market. The Presidency indicated that work should continue to enable an agreement in the near future, with the aim of implementing a first phase of the FTT from 1 January 2016, in close cooperation with the Commission services to ensure that solutions eventually identified are viable, legally sound and coherent with the rules of the internal market.
46. In the light of the foregoing, the Italian Presidency intends to continue work at technical level with all Member States as necessary before the end of its term and in preparation of further work in 2015.

VAT: Treatment of Vouchers

47. The Commission put forward a proposal in May 2012 to provide for common EU rules for the VAT treatment of vouchers. These changes are considered necessary to support businesses operating cross-border and to ensure that instances of double taxation or non-taxation do not occur.

48. During the discussions in the Council under the previous Presidencies, it became apparent that Member States converged on the need for common VAT rules on vouchers and urged an agreement on the proposal before the entry into force of the new 'B2C place of supply rules' in 2015, given that a high proportion of telecommunication services and e-services are made by way of vouchers.
49. Against this background and building on the work done by the Hellenic Presidency, the Italian Presidency has proposed a step-by-step approach, with a first step aimed at targeting telecom vouchers and other vouchers with similar features in response to that need and presented new compromise texts in four Council WPTQ meetings with a view to reaching agreement on its approach.
50. To bring its approach forward, the Presidency focussed its main efforts on:
- a general definition of vouchers, with a clear distinction being made between Single-Purpose Vouchers (“SPV”) and Multi-Purpose Vouchers (“MPV”);
 - special rules on VAT chargeability depending on whether related to SPVs or MPVs;
 - taxable amount.

A large majority of Member States has supported the approach undertaken by the Presidency recognizing the urgency of clarifying the legal situation in respect of vouchers potentially affected by the new VAT rules above.

51. Though substantial progress has been made on the issues mentioned above, for some Member States further technical work appears necessary to bridge different views of Member States on more complex issues like distribution chain, non-redeemed vouchers, discount vouchers and so on. A few Member States also wish to continue discussing the Commission proposal rather than pursuing the targeted approach undertaken by the Presidency.

VAT: Standard VAT Return

52. In October 2013 the Commission tabled a proposal for a standard VAT return. The proposal foresees a uniform set of requirements that would replace the diverse national VAT return standards. The aim of the proposal is to reduce administrative burden for businesses, particularly SMEs, and remove divergences which are an obstacle to EU trade, while promoting at the same time voluntary compliance.
53. Along the lines set out in the Hellenic Presidency progress report (doc. 10276/14 FISC 87), that was endorsed by the ECOFIN Council in June 2014, the Italian Presidency has continued the technical examination of the proposal and discussed thoroughly its main elements: detailed content of the standard VAT return; electronic submission; tax periods and related thresholds for micro-enterprises; payment deadlines; adjustments to be made under the standard VAT return; recapitulative annual return; additional information required by Member States for control purposes or prevention of tax frauds, evasion and other abusive practices.
54. Six meetings of the Council WPTQ were held. With regard to the content of the standard VAT return, the Presidency has devoted its main efforts to finding an equilibrium between attaining an economically viable level of simplification and the degree of flexibility demanded by Member States for reasons of control or prevention of fraud, evasion or other abusive practices in the field of VAT. As regards the form, the majority of Member States has welcomed a common form of the standard VAT return, but there are still different views on the degree of standardisation of such a form.

55. The last compromise text (doc. 14580/14 FISC 170) was discussed at the Working Party meeting on 27 October 2014. Subsequently, the Presidency submitted a compromise text to the Coreper on 30 October in view of the discussion at the November ECOFIN meeting on key outstanding issues for which political guidance was needed, i.e. the level of standardisation for the content and the form of the standard VAT return; the application of thresholds to allow micro-enterprises to submit the standard VAT return on a quarterly basis (or longer); and the use of the EU VAT web portal to complement the proposal. The discussion showed remaining divergent views among Member States, some in particular expressing doubts on the benefits of a standard VAT return that might include information not required under their national systems, while others asking for more flexibility.
56. The Presidency note submitted to the Council suggested that the proposal for a standard VAT return should be agreed as a package consisting of three main elements: the content, the form and - as a complementary information platform for non- standardised VAT obligations - the EU web portal.
57. At the ECOFIN meeting on 7 November 2014, the Presidency, supported by the Commission, also highlighted the importance of the file in terms of administrative burdens reduction for businesses and noted that further reflection is needed on how to strike the right balance between standardisation and flexibility requested by Member States.

VAT: Mandate for Commission to open negotiations for agreement between EU and Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT

58. The European Council of 1/2 March 2012 invited the European Commission to rapidly develop concrete ways to improve the fight against tax fraud and evasion, including in relation to third countries. The Commission in its action plan on tax fraud and evasion included the possibility of negotiating mutual assistance agreements on VAT with certain third countries.
59. In February 2014, the Commission tabled two recommendations for two Council decisions to authorize the Commission to open negotiations for agreements between the European Union and Norway and Russia on administrative cooperation, combating fraud and recovery of claims in the field of VAT.
60. The Italian Presidency discussed at the Council WPTQ meeting on 27 October the draft recommendation between the European Union and Norway, on the basis of the compromise proposal prepared by the Hellenic Presidency. The Presidency compromise (doc. 8739/14 FISC 67 N 10 EU RESTRICTED) was agreed by the WPTQ. This file was adopted by the Council (ECOFIN) on 9 December 2014.
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B. Tax Policy Coordination

61. Important work in the area of Tax Policy coordination (outside of EU tax legislation) has been taken forward during the Italian Presidency.

a) Code of Conduct Group (Business taxation)

62. On the basis of the Work Programme approved in 2011 (doc. 18398/11 FISC 167), the Code of Conduct Group met three times under the Italian Presidency and continued work on standstill and rollback of harmful tax regimes. As regards the standstill, in December 2013 the ECOFIN Council invited the Group to analyse the third criterion of the Code of Conduct (substantial activity) and to assess all patent box regimes (including those already evaluated) by the end of 2014 taking into account the international developments, including the OECD work on BEPS.

63. With respect to patent boxes, the Group discussed the features of the “modified nexus approach” and its compatibility with EU law (with the assistance of the Council Legal Service). The Commission prepared an evaluation of the patent box regimes, but without any assessment under the third criterion. Agreement was reached on the interpretation of the third criterion of the Code of Conduct with regard to patent boxes as contained in the existing mandate as set out in the report to ECOFIN. On 9 December 2014 the Council (ECOFIN) endorsed the report on the work done during the Italian Presidency (doc. 16553/1/14 REV 1 FISC 225 ECOFIN 1166), and the accompanying Council Conclusions (doc. 16846/14 FISC 233 ECOFIN 1196).

64. Progress has been made on the dialogue on company tax issues with Switzerland, with the signature of a Joint Statement between the representatives of the Member States and Switzerland on 14 October 2014. The Group agreed to continue discussion with Liechtenstein.

b) Code of Conduct Group – anti-abuse: Subgroup on hybrid mismatches

65. The Code of Conduct Subgroup on anti-abuses launched its work on hybrid mismatches during the Irish Presidency. Under the Italian Presidency, the Subgroup met twice (29 September and 13 November) and finalised a guidance and explanatory notes on hybrid entity mismatches involving two Member States.
66. The Subgroup also continued discussions on mismatches deriving from hybrid permanent establishments. Further work will be devoted with the aim of finding an effective solution in line with the OECD work in mismatch situations leading to double deduction.

c) Other tax coordination issues

67. The Italian Presidency has continued work on new areas already identified by previous Presidencies for possible tax policy coordination in the HLWP.

i) EU/OECD: Base Erosion and Profit Shifting (BEPS)

- Paragraph 6 of the Council conclusions of 14 May 2013 relates to coordination and cooperation with the OECD and G20 on BEPS:
"6. SUPPORTS further efforts at OECD level on Base Erosion and Profit Shifting (BEPS) and RECALLS the European Council Conclusions of 13 and 14 March 2013 on the need for close cooperation with the OECD and the G20 to develop internationally agreed standards for the prevention of base erosion and profit shifting and in particular NOTES the European Council call for the European Union to coordinate its positions. NOTES that this coordination will take place through the appropriate Council bodies including the High Level Working Party and WELCOMES that progress at international level in this area is being monitored. To this end, the EU should closely monitor its legal framework and identify where common solutions would best ensure effectiveness and efficiency."

- In Paragraph 27 of its conclusions of 19/20 December 2013, the European Council states the following:
"27. Recalling its conclusions of May 2013, the European Council calls for further progress at the global and EU levels in the fight against tax fraud and evasion, aggressive tax planning, base erosion and profit shifting (BEPS) and money laundering. The European Council welcomes work undertaken in the OECD and other international fora to respond to the challenge of taxation and ensure fairness and effectiveness of tax systems, in particular the development of a global standard for automatic exchange of information, so as to ensure a level playing-field."

- Following discussion on this issue held during the Hellenic Presidency, the Italian Presidency promoted and carried forward an EU-BEPS work programme structured around three main areas:
 - 1) bringing forward discussions on EU tax dossier taking into account BEPS objectives and proposed solutions;

 - 2) exploring the EU legal framework and the case-law of the Court of Justice of the European Union (CJEU) with a view to assessing whether they may prevent or create obstacles to the possible implementation of BEPS solutions;

 - 3) identifying specificities of the EU tax legislation which can favour BEPS through a fact findings approach (starting from examples of aggressive tax planning techniques).

- At the HLWP of 23 July 2014 the Italian Presidency illustrated the EU-BEPS work programme and suggested that this exercise could be conducted by Member States, with the assistance of the Commission, with the aim of reporting back regularly to the HLWP. Delegations broadly supported the approach proposed by the Italian Presidency and highlighted the importance of having a coordinated position in this area.

- The Italian Presidency brought forward the work on all existing BEPS related implications, notably:
 - the CCCTB proposal;
 - the Parent Subsidiary Directive;
 - the Interest and Royalty Directive;
 - the Code of Conduct Subgroup
 and regularly updated the HLWP on progress made.

- The Commission continued discussions on the interaction between the EU Treaty Freedoms and BEPS, devoting during the Italian Presidency a meeting with Member States to discuss CFC rules and Limitation of Benefits (LOB) clauses.

- At the High Level Working Party of 25 November 2014, a discussion was held on further work in the Council related to unfair tax competition, base erosion and profit shifting. It was noted that this work should be comprehensive and coherent, and should be brought forward on the basis of a concrete roadmap which includes actions and clear timelines, with the support of the Commission, and with a view to making significant progress by mid 2015. The incoming Latvian Presidency expressed its readiness to promote discussions on these issues.

ii) Digital economy: Follow-up to the European Council on 24/25 October 2013

- The European Council conclusions of 24/25 October 2013, covering tax aspects linked to the digitalisation of the economy:

"4. The ongoing work to tackle tax evasion, tax fraud, aggressive tax planning, tax-base erosion and profit shifting is also important for the digital economy. Member States should further coordinate their positions where appropriate in order to achieve the best possible solution for Member States and the EU in the OECD/BEPS (Base Erosion and Profit Shifting) framework. In its ongoing VAT review, the Commission will also address issues which are specific to the digital economy, such as differentiated tax rates for digital and physical products. The European Council welcomes the Commission's initiative to set up an expert group on taxation of the digital economy."

- At the HLWP on 23 July the Commission gave a presentation on the main findings of the Commission Expert Group on Taxing the Digital Economy on both direct and indirect taxation. From the following debate among delegations emerged the importance for the EU to closely cooperate with the OECD and the G20 on the ongoing BEPS work at the OECD level in this area and to take into account this work, in particular in the areas identified by the Commission Expert Group, in view of any possible follow-up initiative.

iii) Tax in non tax dossiers

On 19 November 2013, the HLWP agreed that tax provisions in non-tax dossiers leading to any changes in Member States' tax laws or administrative practices or having other consequences on taxation should fall under an alert mechanism at the earliest possible stage.

On the basis of the informal "Early Alert Mechanism" agreed during the Hellenic Presidency, the Italian Presidency informed about the latest tax provisions included in non-tax dossiers at the meeting of the HLWP on 2 October 2014. The systematic approach of bringing these cases to the attention of tax experts, with the support of the General Secretariat, will continue to ensure that Member States are alerted in a timely manner.
